IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

Ramesh Joshi vs. State of Rajasthan & Ors.
(S.B.CIVIL WRIT PETITION NO.2991/06)

Dated:- 15.11.2007.

HON'BLE MR.JUSTICE SANGEET LODHA

Mr.S.P.Arora, for the petitioner.
Mr. M.R.Singhvi, for the respondent.

BY THE COURT:-

This writ petition is directed against order dated 24.2.06 passed by the learned Board of Revenue, Rajasthan, Ajmer , whereby the appeal preferred by the petitioner against order dated 7.9.05 passed by the Excise Commissioner, Rajasthan , Udaipur, suspending the license issued in favour of the petitioner for operating the shop of liquor and beer, has been rejected as barred by time.

The petitioner was granted a license to operate a liquor and beer shop at Seti, Chittorgarh . It is alleged that on inspection of the petitioner's godown, on 23rd August, 05, certain undeclared liquor and beer bottles were found. Consequently, the petitioner's license to operate the shop was suspended till further orders and the District Excise Officer, Chittorgarh was directed to make investigation and inquiry into the matter and submit the report.

The validity of aforesaid order dated 7.9.05 was assailed by the petitioner by way of petition No.5366/05 which was rejected by the learned Single Judge as not maintainable. A D.B.Special Appeal No.430/05 preferred by the petitioner against the order passed by the learned Single Judge was dismissed by the Division Bench vide order dated 10.11.05 and the petitioner was relegated to the remedy of appeal under the relevant Statute with the following observations:-

> "During the pendency of the litigation the limitation for preferring the appeal has expired as per the learned counsel for the appellant. In the circumstances, we direct that if the appeal is preferred against the impugned order dated 7.9.2005 before the appellate authority within 15 days along with the application for condonation of delay, the expiry of limitation because of the pendency of these proceedings will not come in the way of authority in entertaining the appeal."

After obtaining the certified copy of the aforesaid order dated 10.11.05 , the petitioner preferred the appeal before the learned Board of Revenue alongwith an application u/s 5 of the Limitation Act, 1963 for condonation of delay. The learned Board of Revenue has rejected the appeal preferred by the petitioner on the ground that the appeal has not been filed within a period of 15 days as directed by this Court. The learned Board opined that the time for filing the appeal having been fixed by the Court, the Board has no jurisdiction to condone the delay invoking the provisions of Section 5 of Limitation Act.

It is contended by the learned counsel that an application for certified copy of the order dated 10.11.05 was submitted by the petitioner on the same day, however, the copy was prepared by the registry on 16.12.05 and was issued to the petitioner on the same day. The appeal was filed by the petitioner before the Board on 19.12.05.Thus, the petitioner has filed the appeal before the Board within a period of three days from the date of the receipt of the certified copy of the order. The learned counsel urged that the petitioner could not have preferred the appeal without certified copy of the order, inasmuch as, in absence thereof, the appeal was bound to be treated as barred by time. The learned counsel submitted that under the bona fide belief that the time spent in obtaining the certified copy shall be excluded while computing the period of 15 days fixed by the Court, and admittedly, the appeal was filed immediately after receipt of the certified copy of the order. Therefore, the learned Board has seriously erred in rejecting the appeal preferred by the petitioner.

It is true that as per the orders passed by the Division Bench of this Court, the petitioner could have preferred the appeal within a period of 15 days from the date of the order and strictly speaking for filing the appeal, the certified copy of the order passed by this Court was not required to be presented at the time of the filing of the appeal. However, it appears that the

petitioner remained under the bona fide belief that the time spent in obtaining the certified copy shall be excluded while computing period of 15 days fixed by the Court for filing the appeal. Moreover, but, for the order passed by this Court, the appeal preferred by the petitioner was bound to be treated barred by limitation, therefore, it was necessary for the petitioner to place on record the order passed by this Court permitting him to prefer the appeal within a period of 15 days. Therefore, in the interest of justice, delay in filing appeal before the learned Board deserves to be condoned.

The learned counsel appearing for the respondents in all fairness has conceded that the order impugned may be set aside and the matter may be remanded to the learned Board of Revenue for consideration on merits.

Accordingly, the writ petition is allowed. The order impugned dated 24.2.06 passed by the learned Board of Revenue is set aside. Delay in filing the appeal before the Board is condoned.The matter is remanded to the learned Board of Revenue for decision afresh, on merits . No order as to costs.

(SANGEET LODHA),J.